

5.0 SPECIFICATION AND APPORTIONMENT OF HARVEST LEVELS

The ability to establish and adjust harvest levels is the first major tool at the Council's disposal to exercise its resource stewardship responsibilities. Each fishing year, the Council will assess the biological, social, and economic condition of the Pacific coast groundfish fishery and will make its assessment available to the public in the form of the SAFE document described in Section 5.1. Based upon the most recent stock assessments, the Council will develop estimates of the ABC for major species or species groups and identify those species or species groups which it proposes to be managed by the establishment of numerical harvest levels. The specification of numerical harvest levels includes the estimation of ABC, the establishment of harvest guidelines or quotas for specific species or species groups, and the apportionment of numerical specifications to DAH, DAP, JVP, TALFF, and the reserve. The specification of numerical harvest levels described in this chapter is the process of designating and adjusting overall numerical limits for a species or species group either throughout the entire fishery management area or throughout specified subareas. The process normally occurs annually between September and November, but can occur under specified circumstances at other times of the fishing year. Numerical limits which allocate the resource or which apply to one segment of the fishery and not another are imposed through the socio-economic framework process described in Chapter 6 rather than the specification process.

The NMFS Regional Director will review the Council's recommendation, supporting rationale, public comments and other relevant information, and, if it is approved, will undertake the appropriate method of implementation. Rejection of the recommendation will be explained in writing.

The procedures specified in this chapter do not affect the authority of the Secretary to take emergency regulatory action as provided for in Section 305(e) of the MFCMA if an emergency exists involving any groundfish resource, or to take such other regulatory action as may be necessary to discharge the Secretary's responsibilities under Section 305(g) of the MFCMA.

The annual specification process, in general terms, proceeds chronologically as follows:

1. Determine the ABC for each major species or species group.
2. Identify any species or species groups which may require special attention or individual management with numerical harvest limits in order to address or prevent resource conservation issues or issues of social, economic, or ecological concern identified by the Council. Examples of these issues include, but are not limited to, rebuilding stocks, achieving equitable resource allocation, increasing overall social and economic benefits, and providing for foreign and joint venture fishing for species not fully utilized by U.S. fish processors.
3. Based on the ABCs, recommend the establishment of either a numerical harvest guideline or quota for each species or species group requiring individual management.

4. Recommend the apportionment of numerical specifications between DAH, DAP, JVP, TALFF, and the reserve.

This chapter describes the steps in this process.

5.1 SAFE Document

For the purpose of providing the best available scientific information to the Council for developing ABCs, determining the need for individual species or species group management, setting and adjusting numerical harvest levels, assessing social and economic conditions in the fishery, and updating the appendices of this FMP, a SAFE document is prepared annually. Not all species and species groups can be reevaluated every year due to limited state and federal resources. However, the SAFE document will, at a minimum, contain the following information:

1. A report on the current status of Washington, Oregon, and California groundfish resources, by major species or species group.
2. Estimates of MSY and ABC for major species or species groups.
3. Catch statistics (landings and value).
4. Recommendations of species or species groups for individual management by harvest guidelines or quotas.
5. A brief history of the harvesting sector of the fishery.
6. A brief history of regional groundfish management.
7. A summary of the most recent economic information available, including number of vessels and economic characteristics by gear type.
8. Other relevant biological, social, economic and ecological information which may be useful to the Council.

The SAFE document is normally completed late in the year, generally late October, when the most current stock assessment and fisheries performance information is available. The Council will make the SAFE document available to the public by such means as mailing lists or newsletters, and will provide copies upon request.

5.2 Establishment and Adjustment of ABC

As part of the process of establishing annual specifications and apportionments described in Section 5.8, the Council will determine the annual ABC for each major species or species group. A detailed discussion of stock assessment techniques and available data used to determine ABC is provided in Appendix 11.1.2.1. MSY and exploitable biomass estimates are discussed in Appendix 11.1.3. ABCs, as defined in Section 2.2, do not act as harvest limits, but provide the biological basis for any numerical harvest levels that the Council recommends be established. ABCs may be established for the fishery management area as a whole or for specified subareas as appropriate. ABCs may be adjusted inseason only for the reasons specified in Section 5.9.1.

All ABCs will remain in effect until revised and, whether revised or not, will be announced at the beginning of each fishing year along with all other annual specifications. In some cases, there will be no new information on the condition of a species or species group. In other cases, new information might continue to support a previous assessment. Therefore, ABCs may remain unchanged over a period of years.

5.3 Identification of Species or Species Groups for Individual Management by Numerical Harvest Guideline or Quota

After reviewing the most current stock assessment information, considering public comment, and taking into account the goals and objectives of the FMP, the Council may determine that certain species or species groups require individual management by numerical harvest guidelines or quotas. Conversely, the Council may determine that a quota or harvest guideline is no longer necessary. Both harvest guidelines and quotas are harvest objectives for a specific species or species group. They are most commonly necessary when resource conservation concerns require the exercise of harvest restraint or when necessary to either apportion the resource to DAH, DAP, JVP, TALFF, and reserve, or to allocate the harvest among different segments of the fishery. They differ, however, in their application.

Harvest guidelines are specified numerical harvest objectives which differ from quotas in that closure of a fishery (i.e., prohibition of retention, possession or landing) is not automatically required upon attainment of a harvest guideline. A harvest guideline may be either a range or a point estimate.

Quotas are specified numerical harvest objectives the attainment of which results in automatic closure of the fishery for that species or species group. Retention, possession or landing of a species or species group after attainment of its quota is prohibited. A quota is a single numerical value, not a range.

Both harvest guidelines and quotas serve as harvest objectives which often require other management measures to be implemented to restrict the annual harvest to the desired level.

A harvest guideline or quota must be designated in order to determine JVP or TALFF for species which are surplus to domestic needs and which can be caught fairly selectively without impacting species which are fully utilized by the domestic industry.

Both harvest guidelines and quotas may be specified for the fishery management area as a whole or for specific subareas.

Before recommending that a species or species group be designated for individual management by either a harvest guideline or quota, the Council should determine whether one or more of the conditions listed below exists in the fishery.

1. Based on the most current stock assessment and expected harvest rates in the fishery, the species or species group is in need of special protection or more cautious exploitation than that provided by current management measures. An example of this consideration is the need to reduce harvests of a species or species group in order to maintain adherence to a stock rebuilding program or the expectation that harvest

rates will be sufficiently high, despite other types of management measures, to achieve or exceed ABC before the end of the year.

2. The species or species group can effectively be managed as a unit.
3. Based on the most current stock assessment and expected harvest rates in the fishery, failure to impose a numerical limitation would likely result in a "point of concern" (as defined in Chapter 6) being reached before the end of the year.
4. A harvestable stock surplus to domestic needs exists and the Council intends to recommend an apportionment of the numerical specification to JVP or TALFF. Any TALFF must be a quota. DAH, DAP and JVP may be either quotas or harvest guidelines. The apportionments to JVP and TALFF may be changed inseason due to reapportionment of the reserve and excess DAP or DAH consistent with the procedures in Section 5.9.3 or to changes in ABC resulting from correction of a technical error (see Section 5.9.1)
5. Through the framework processes described in section 6.2.3, the Council has recommended a direct allocation of the resource among different segments of the fishery.

5.4 Guidelines for Choosing Between a Harvest Guideline or Quota

Normally, the recommendation to manage a species or species group with a harvest guideline or quota will be made in conjunction with the ABC determination for the upcoming year. Harvest guidelines and quotas in effect at the end of the fishing year will carry over into the subsequent year in the absence of a recommendation for change by the Council.

Generally, a harvest guideline will be used rather than a quota when one or more of the following exists:

- ° a minimal level of additional protection or caution is believed to be sufficient;
- ° incidental catches in groundfish fisheries, or other fisheries not regulated by this FMP, are unavoidable and significant;
- ° unavoidable incidental catch would occur after a quota is reached and further landings are prohibited, resulting in the discard and wastage of significant quantities of fish;
- ° data are insufficient to adequately estimate status of stocks or inseason landings;
- ° harvest in excess of a harvest guideline is not expected to result in overfishing or to prevent adherence to a rebuilding program adopted by the Council and approved by the Secretary.

Generally a quota will be used rather than a harvest guideline when one or more of the following exists:

- ° It is necessary to prevent overfishing or to adhere to a rebuilding program adopted by the Council and approved by the Secretary.
- ° An overall quota is necessary to achieve resource allocations established through the frameworks described in Chapter 6.

As described in Chapter 1, unless otherwise specified by this amendment, all regulations and notices authorized by the original FMP and in effect at the time Amendment 4 is implemented are intended to continue in effect until changed. This includes the designation of species or species groups that are managed with a harvest guideline or quota. Under the original FMP, two species or species groups were managed by harvest guidelines and six species were managed by numerical OYs, or quotas. Consistent with the intent of this amendment and the original FMP, those species and species groups will continue to be managed as they have under the original FMP until such time as any changes are recommended by the Council and approved by the Secretary. A list of the species and species groups which initially will continue to be managed by harvest guidelines and quotas appears in Chapter 12.

It is expected that the Council will, from time to time, find it necessary to add new species or species groups, change quota managed species to harvest guideline management and the converse, revise areas to which harvest guidelines and quotas will apply, or remove some species from management by numerical specifications. All of these actions may be recommended provided they are consistent with the guidelines and procedures in this Amendment.

5.5 Guidelines for Determining the Numerical Specification of a Harvest Guideline or Quota

The determination of the actual numerical specification of a harvest guideline or quota is analogous to the determination of OY under the MFCMA and under the original FMP. The foundation for the Council's recommendation is the ABC for a species or species group. The numerical specification of a harvest guideline or quota is an adjustment from the ABC, either up or down, based upon social, economic, or ecological considerations. For example, the Council may recommend a harvest guideline or quota lower than ABC to speed up a stock rebuilding process or to account for estimates of discards. Conversely, the Council may recommend a numerical specification higher than ABC to mitigate abrupt adverse economic impacts in the face of the need to reduce harvests on a declining stock. However, if the Council chooses to recommend a harvest guideline or quota higher than ABC, it will consider the following factors in making its determination:

- ° Exploitable biomass and spawning biomass relative to MSY levels for the species or species group under consideration.
- ° Fishing mortality rate relative to MSY levels for the species under consideration.
- ° In the case of species normally taken in mixed catches, the relative contribution of the species to the total catch.
- ° The impact, if any, of the proposed increase on other groundfish species or species groups.

- ° The magnitude of incoming recruitment.
- ° The impact of harvest higher than ABC on the potential for future harvests to achieve the goals and objectives of the FMP.

The original FMP limited increases in OY, inseason and from year to year, to a maximum of 30 percent. Amendment 4 removes this restriction because it limited the Council's ability to utilize the best available biological information. Both ABC and numerical specifications based upon ABC should reflect the most current and best biological information as well as the most current information on the social and economic condition of the fishery.

In recommending a numerical specification, the Council generally will ensure the harvest at that level will prevent overfishing and that any stock rebuilding program adopted by the Council and approved by the Secretary is not adversely affected. However, as provided for in Chapter 4 and Sections 5.6 and 5.8, the Council may consider circumstances where reductions in future yield or even overfishing of a single species in a multiple species complex may be justified if increased benefits from the fishery as a whole will outweigh the loss from future reduced yield from the single species and the goals and objectives of the FMP can continue to be achieved in future years.

For species with harvest guidelines, the Council will monitor catch rates throughout the year and project when, and if, a harvest guideline will be reached. Upon determining that a harvest guideline is likely to be reached prematurely if harvest rates are not curtailed, a "point of concern" occurs, triggering a mandatory review of the stock status and harvest patterns as specified in Section 6.2.2. Based on the results of that review, the Council will recommend that continued harvest either be allowed with no additional restrictions, be allowed with additional restrictions to further reduce harvest, or be discontinued and the fishery closed.

5.6 Stock Rebuilding Programs [refer to original FMP Section 12.3.1.4.1, page 12-18]

When a stock falls below the level which will produce MSY, and is expected to stay below this level unless fishing mortality is reduced, the Council will review and determine if there is the need for more restrictive management measures (including harvest guidelines and quotas) to protect the stock and allow it to rebuild to more productive levels. Rebuilding objectives may be established by the Council on a case-by-case basis, taking into account the ABC, MSY, spawner recruit relationships, growth and maturation rates, age of recruitment, anticipated or assessed year class strength and age structure of the population, economic importance, and any other relevant social, economic, biological, or ecological factors. Appropriate measures to achieve the stated objectives will be determined by the Council based on those factors. More specific details relating to an operational definition of overfishing and the appropriate criteria, which might result in the Council being required to develop and implement a stock rebuilding program for stocks of Pacific coast groundfish, are currently being developed as Amendment 5 to this FMP in response to the NOAA Operational Guidelines (602 guidelines). Amendment 5 is required by the NOAA guidelines to be submitted for Secretarial review and approval by November 1990.

In certain limited situations a stock may be fished down to a spawning biomass below the level which will produce MSY and maintained at that level if justified in writing and approved by the Secretary (see Section 4.0). For example, harvesting the major components of the mixed fishery at the optimum level may result in the overfishing of a minor (smaller or less valuable) stock component in the fishery management unit. In this circumstance, the Council will evaluate whether some species may be underutilized and significant benefits to the fishery foregone if a rebuilding program were initiated. The Council may choose to not rebuild a stock back to the MSY level under this type of circumstance if it determines that significant benefits will be foregone by rebuilding, if the action will not cause any stock component to require protection under the Endangered Species Act (ESA), and if the choice is justified in writing and approved by the Secretary.

When the Council determines a rebuilding program is necessary, it shall develop a plan based upon the best available scientific information. The plan should specify the time required for rebuilding and anticipate, to the extent practicable, the harvest restrictions necessary to achieve rebuilding. The Council will hold public hearings on the plan which, if adopted, will be forwarded to the Secretary for review, approval, and implementation. The Secretary will publish a proposed rule implementing the plan in the Federal Register seeking public comment, following which, if approved, the Secretary will publish a final rule implementing the plan in the Federal Register.

In the event that the Secretary disagrees with the Council's recommended rebuilding program, he may recommend the Council consider alternative measures or provide a more complete rationale for the recommendation. The Council will consider the Secretary's comments and may reaffirm its choice of the proposed action and provide the requested justification, or may recommend alternative measures.

If the Council establishes a rebuilding program, it will periodically review the effectiveness of the rebuilding measures and may revise the measures or objectives, taking into account the best scientific information available.

Amendment 4 continues in effect a 20-year rebuilding program for Pacific ocean perch established by the original FMP. As discussed in Section 11.1.3.6, the abundance of Pacific ocean perch has been and continues to be below the level which will produce MSY. The initial rebuilding program relied on annual regulations, including quotas and trip limits, designed to implement the Council's policy of no directed fisheries for Pacific ocean perch during the rebuilding period while recognizing that some Pacific ocean perch will be taken in fisheries directed at other species. The quotas and trip limits in effect when Amendment 4 is implemented, which will continue in effect subject to adjustment in accordance with the provisions in Chapters 5 and 6, are intended to allow the retention only of amounts of Pacific ocean perch taken incidentally to fisheries for other groundfish species.

5.7 Establishing and Adjusting DAH, DAP, JVP, and TALFF Apportionments [refer to original FMP Section 10.2.1.3, page 10-4; Section 11.3, page 11-12]

In some cases, U.S. harvesting and/or processing capacity and intent may be insufficient to fully utilize all the fish that may be harvested. When the entire amount of fish available for harvest will not be caught by U.S. fishermen

and processed by U.S. (domestic) processors, and if it can be harvested without severely impacting another species that is fully utilized by the U.S. industry, any quantity of fish excess to DAP may be made available for JVP. If DAH (i.e., the sum of DAP and JVP) is less than the amount of fish available for harvest, any further remainder may be apportioned to the foreign directed fishery as TALFF. When it is determined that quantities of a species or species group exist which are surplus to domestic processing needs, the Council will consider recommending a numerical harvest guideline or quota for the purpose of further apportionment to DAH, DAP, JVP, TALFF, and the reserve.

Prior to the next year's fishing season (usually about September of the preceding year), NMFS will conduct a survey of domestic processors and joint venture operations to estimate processing capacity, planned utilization, and related information. The DAP, the estimate of domestic annual processing needs which is derived from the survey and subsequent public testimony, is subtracted first from the harvest guideline or quota. If after subtracting the DAP, any harvestable quantity of fish remains and is requested for joint venture operations, the amount requested may be specified for JVP after providing for the reserve. The sum of DAP and JVP is DAH, an estimate of the total domestic annual harvest. Any remainder may be made available for foreign fishing as TALFF. TALFF is only that quantity of fish surplus to DAH and the reserve. TALFF will always be a quota. DAH, DAP and JVP may be either a quota or harvest guideline.

A reserve will be set aside at the beginning of the year for any species with a JVP or TALFF. The reserve allows for uncertainties regarding estimates of DAP and DAH by providing a buffer for the domestic industry should its processing and harvesting needs exceed initial estimates. At the beginning of the year the reserve will equal 20 percent of the quota or harvest guideline for a species unless DAP is greater than 80 percent of the harvest guideline or quota. In that case, the reserve will be the difference between the harvest guideline or quota and DAP. The reserve may be released during the year to DAH (DAP and/or JVP) or TALFF, with highest priority to DAP followed by JVP, and lastly, TALFF.

Generally, NMFS will present the results of the domestic and joint venture processing survey to the Council for consultation and public comment concurrent with the Council's consideration of annual specifications. The Council may adopt recommendations for annual apportionments for implementation in accordance with the annual procedures for developing and implementing annual specifications described in Section 5.8. Apportionments may be adjusted inseason following the procedures in Section 5.9.3. Incidental allowances for by-catch in the joint venture and foreign directed fisheries are discussed in Sections 6.3.5.3 and 6.3.6.3, respectively.

5.8 Procedure for Developing and Implementing Annual Specifications and Apportionments

Annually, the Council will develop recommendations for the specification of ABCs, identification of species or species groups for management by numerical harvest guidelines and quotas, specification of the numerical harvest guidelines and quotas, and apportionments to DAH, DAP, JVP, TALFF, and the reserve over the span of two Council meetings.

The Council will develop preliminary recommendations at the first of two meetings (usually in September) based upon the best stock assessment information available

to the Council at the time and consideration of public comment. After the first meeting, the Council will provide a summary of its preliminary recommendations and their basis to the public through its mailing list as well as providing copies of the information at the Council office and to the public upon request. The Council will notify the public of its intent to develop final recommendations at its second meeting (usually November) and solicit public comment both before and at its second meeting.

At its second meeting, the Council will again consider the best available stock assessment information which should be contained in the recently completed SAFE report and consider public testimony before adopting final recommendations to the Secretary. Following the second meeting the Council will submit its recommendations along with the rationale and supporting information to the Secretary for review and implementation.

Upon receipt of the Council's recommendations, supporting rationale and information, the Secretary will review the submission and, if approved, publish a notice in the Federal Register making the Council's recommendations effective January 1 of the upcoming fishing year.

In the event that the Secretary disapproves one or more of the Council's recommendations, he may implement those portions approved and notify the Council in writing of the disapproved portions along with the reasons for disapproval. The Council may either provide additional rationale or information to support its original recommendation, if required, or may submit alternative recommendations with supporting rationale. In the absence of an approved recommendation at the beginning of the fishing year, the current specifications in effect at the end of the previous fishing year will remain in effect until modified, superceded, or rescinded.

5.9 Inseason Procedures to Establish and Adjust Specifications and Apportionments

5.9.1 Inseason Adjustments to ABCs

Occasionally, new stock assessment information may become available inseason that supports a determination that an ABC no longer accurately describes the status of a particular species or species group. However, adjustments will only be made during the annual specifications process and a revised ABC announced at the beginning of the next fishing year. The only exception is in the case where the ABC announced at the beginning of the fishing year is found to have resulted from incorrect data or from computational errors. If the Council finds that such an error has occurred, it may recommend the Secretary publish a notice in the Federal Register revising the ABC at the earliest possible date.

5.9.2 Inseason Establishment and Adjustment of Harvest Guidelines and Quotas

Harvest guidelines may be established and adjusted inseason: (1) for resource conservation through the "points of concern" framework described in Chapter 6; (2) in response to a technical correction to ABC described in Section 5.9.1; or, (3) under the socio-economic framework described in Chapter 6.

Quotas, except for apportionments to DAH, DAP, JVP, TALFF, and reserve, may be established and adjusted inseason only for resource conservation or in response to a technical correction to ABC.

5.9.3 Inseason Apportionment and Adjustments to DAH, DAP, JVP, TALFF, and Reserve

It may become necessary inseason to adjust DAH, DAP, JVP, TALFF, and the reserve to respond to the establishment or adjustment of a harvest guideline or quota, revisions to ABC, an inseason reassessment of DAP and JVP needs, or an inseason release of the reserve. Estimates of the upcoming year's production by domestic processors are difficult to make accurately before the season begins. Processor survey responses are often optimistic and may not materialize during the year. Machinery installation delays, changes in markets, and better than normal alternative fisheries for the fishing fleets (or processors) may all affect their actual production. Therefore, a DAH reassessment process with a mechanism to make adjustments to apportionments within DAH (to DAP and/or JVP) or to TALFF, and to release the reserve is required to achieve full utilization of certain stocks and to insure the domestic processor preference intent of the MFCMA is met.

The original FMP specified that the reapportionment process would not start until after June 1 and reapportionments would not be released until after August 1 of any year. This schedule worked well when the foreign and joint venture fisheries for Pacific whiting began in April and ended in October and the reapportionment date corresponded with the midpoint of the fishery. In recent years, however, the foreign fishery has been displaced by the joint venture fishery and the joint venture season has shrunk to the point where the fishery in 1989 was over and the vessels had left for other fisheries before the reapportionment date. Thus, in order to fully utilize any surplus of Pacific whiting, for example, it is necessary to provide the latitude to reap-portion harvestable surpluses at other times of the year.

Thus, Amendment 4 revises the DAH reassessment process so it may be initiated at any time during the year that NMFS or the Council determines appropriate. The process begins with NMFS reassessing the needs of the domestic processing industry and updating its previous estimate of domestic processing intent.

Based upon this reassessment, all or part of the reserve may be apportioned among DAH, DAP, JVP, and TALFF with domestic needs met first (and with DAP having priority over JVP). If the domestic industry does not intend to harvest the entire reserve, the remainder may be made available to TALFF.

In addition to apportionment of the reserve, further adjustments may be made if the reassessment indicates that the domestic industry will not use the quantities designated for DAH. In this case, surplus DAP could be made available to JVP, or surplus DAH to TALFF. This release would only be made if inseason performance of U.S. processors and harvesters was clearly expected to fall short of DAH estimates, and if the JVP and foreign harvesters indicated a desire to utilize amounts in excess of their initial apportionment.

Following reassessment of the DAH, the NMFS Regional Director will consult with the Council, if practicable, before publishing a notice in the Federal Register seeking public comment for a reasonable period of time on the proposed

adjustments to the apportionments. After receiving public comment, the Regional Director will publish a final notice in the Federal Register announcing the effectiveness of the adjustments.

Sometimes the pace of the fisheries may be so rapid that failure to act quickly to make adjustments to apportionments would ultimately result in the inability of the fishery to take advantage of an adjustment. For example, in 1990, as in 1989, the joint venture fishery for Pacific whiting is expected to occur very rapidly resulting in a season closure. At that point, the foreign processing vessels may leave to participate in other fisheries before an adjustment releasing additional fish to the JVP can be made through process described above. In such cases where rapid action is necessary to prevent underutilization of the resource, the Regional Director may immediately publish a notice in the Federal Register making the adjustments effective and seek public comment for a reasonable period of time afterwards. If insufficient time exists to consult with the Council, the Regional Director will inform the Council in writing of actions taken within two weeks of the effective date.